

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE UNIVERSAL HEALTH SERVICES,  
INC. DERIVATIVE LITIGATION

This Document Relates To:

ALL ACTIONS

Civil Action No. 17-cv-2187

Hon. Joel H. Slomsky

**ORAL ARGUMENT REQUESTED**

**DEFENDANTS' MOTION TO DISMISS THE VERIFIED  
SHAREHOLDER DERIVATIVE CONSOLIDATED AMENDED COMPLAINT**

Defendants Universal Health Services, Inc., Alan B. Miller, Lawrence S. Gibbs, John H. Herrell, Robert H. Hotz, Eileen C. McDonnell, Marc D. Miller, Anthony Pantaleoni, Charles F. Boyle, Steve G. Filton, Debra K. Osteen, and Marvin G. Pember, by and through their undersigned counsel, hereby move to dismiss the Verified Shareholder Derivative Consolidated Amended Complaint ("Amended Complaint") (Dkt. 48) with prejudice pursuant to Rule 23.1, Rule 12(b)(5), and/or Rule 12(b)(6) of the Federal Rules of Civil Procedure.

As set forth in the accompanying memorandum of law, the Amended Complaint should be dismissed with prejudice for two reasons. *First*, the Amended Complaint does not adequately plead that demand was futile insofar as it does not plead that any director faces a substantial threat of personal liability or sufficiently state a claim against any Defendant. *Second*, the Amended Complaint does not adequately plead that demand was futile insofar as it does not plead that a majority of directors were beholden to Alan Miller, even assuming, for the sake of argument, that Alan Miller is interested.

Pursuant to this Court's *Scheduling and Motion Policies and Procedures*, Defendants hereby request oral argument. This Motion poses a number of legal issues, and oral argument would aid the Court in its decisional process.

WHEREFORE, for the reasons set forth herein and in the accompanying memorandum of law, Defendants respectfully request that the Court dismiss the Amended Complaint with prejudice pursuant to Rule 23.1, Rule 12(b)(5), and/or Rule 12(b)(6).

Dated: February 11, 2019

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

ROBBINS, RUSSELL, ENGLERT, ORSECK,  
UNTEREINER & SAUBER LLP

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*Counsel for Nominal Defendant Universal  
Health Services, Inc.*

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**[PROPOSED] ORDER**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, upon consideration of Defendants' Motion to Dismiss the Verified Shareholder Derivative Consolidated Amended Complaint and any response thereto, it is hereby ordered that the motion is **GRANTED**. The above-captioned matter is **DISMISSED WITH PREJUDICE**.

\_\_\_\_\_  
Hon. Joel H. Slomsky  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of February, 2019, I caused a true and correct copy of the foregoing Defendants' Motion to Dismiss the Verified Shareholder Derivative Consolidated Amended Complaint to be filed using the Court's CM/ECF system. The Court's CM/ECF system will effect service of a copy of the foregoing on all counsel of record registered with the Court's CM/ECF system, and the foregoing document will be available for viewing and downloading from the system.

/s/ Gary A. Orseck  
Gary A. Orseck